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JUN 16 2004

In re Application of: :
Kosaka, *et al.* : DECISION ON PETITION TO
Application No. 09/922,926 : WITHDRAW HOLDING OF
Filed: August 07, 2001 : ABANDONMENT
Attorney Docket No.: 44085-154 :
:

This is a decision on the petition filed November 06, 2003, requesting withdrawal of the holding of abandonment of the above-identified application. A petition fee is not required.

The petition is **granted**.

The application was held abandoned for the applicant's apparent failure to timely respond to the Office action mailed March 12, 2002. A Notice of Abandonment was mailed on August 23, 2003.

Petitioner asserts that a response, including, *inter alia*, an amendment and a petition for a three-month extension of time, was timely filed in the U.S. Patent and Trademark Office (PTO) on September 11, 2002. To support this assertion, petitioner has submitted a copy of the response to the Office action and a copy of a return postcard that properly identifies and acknowledges receipt of the response by the United States Patent and Trademark Office (PTO) on September 11, 2002.

A review of the application file record reveals that the above-identified response is not of record in the application file and cannot be located. However, M.P.E.P. § 503 states that "A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Additionally, the application file fee record reveals that petitioner's deposit account was charged a \$920.00 extension of time fee on September 12, 2002. The mailroom date of the authorization to charge the fee is September 11, 2002. As such, the evidence provided indicates that the response was timely received in the PTO on September 11, 2002, but lost after receipt thereof.

For the above stated reason, the request is granted. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The application file is being forwarded to the Technology Center 2800 support staff for entry of the response. From there, the application will be forwarded to the examiner for appropriate action.

Inquiries regarding this decision should be directed to Lissi Mojica Marquis at (571) 272-1596.



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